

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 14-N-02738-DFM
)	
BYRON EDWIN CONGDON,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 123286,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

In this matter, respondent **Byron Edwin Congdon** (Respondent) was charged with violating California Rules of Court, rule 9.20(c). Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney’s default is entered for failing to respond to the notice of disciplinary charges, and the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney’s disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.
² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on June 10, 1986, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 11, 2014, the State Bar properly filed and served an Amended Notice of Disciplinary Charges (NDC)³ on Respondent by certified mail, return receipt requested, at his membership records address. The amended NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The amended NDC was not returned to the State Bar by the U.S. Postal Service as undeliverable or for any other reason.

In addition, reasonable diligence was also used to notify Respondent of this proceeding. The State Bar made several attempts to contact Respondent. These efforts included calling him at his membership records telephone number, sending an email to him at his non-public State Bar email address, checking for alternative contact information with his State Bar probation deputy, receiving a voicemail message from Respondent and calling the alternative telephone number he provided in his voicemail message, and speaking with the manager of Respondent's former office building.

Respondent failed to file a response to the NDC. On July 18, 2014, the State Bar filed and properly served a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the

³ The original notice of disciplinary charges was filed two days earlier, on June 9, 2014.

deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified Respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on August 18, 2014. The order entering the default was served on Respondent at his membership records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On November 24, 2014, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) Respondent has one other disciplinary matter pending; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on January 21, 2015.

Respondent has been disciplined on three prior occasions.

Effective November 7, 2006, Respondent was publicly reprovved with conditions of reproof in State Bar Court case No. 05-O-03890. In that matter, Respondent stipulated to a single count of failing to cooperate with or participate in a disciplinary investigation.

Pursuant to a Supreme Court order filed on June 28, 2012, in case No. S200695 (State Bar Court case Nos. 10-O-11270 and 11-O-18100), Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years, including a 90-day period of actual suspension. In that matter, Respondent stipulated to three counts of

misconduct in two matters, including failing to respond to reasonable client status inquiries, failing to communicate significant developments, and practicing law while not entitled to do so.

Pursuant to Supreme Court order filed on January 14, 2014, in case No. S200695 (State Bar Court case No. 13-PM-15389), Respondent's probation was revoked and he was actually suspended for two years and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. In that default matter, Respondent was found culpable of violating the terms of his prior disciplinary probation.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

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Respondent failed to file with the clerk of the State Bar Court a declaration of compliance with California Rules of Court, rule 9.20, in conformity with the requirements of rule 9.20(c) by March 25, 2014, as required by the Supreme Court, in willful violation of California Rules of Court, rule 9.20.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) reasonable diligence was used to notify Respondent of the proceedings prior to the entry of his default,;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC, deemed admitted by the entry of the default, support a finding that Respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent **Byron Edwin Congdon**, State Bar number 123286, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Byron Edwin Congdon**, State Bar number 123286, be involuntarily enrolled as

an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: April _____, 2015

DONALD F. MILES
Judge of the State Bar Court